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Establish Family Trust for Wealth Management

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Wealth Management

- To cater for the financial needs of affluent clients
  - ➢ Investment, estate planning, retirement and tax
- To manage clients' wealth, developing a strategic plan for their current and future needs.

1. Trustee
2. Will
3. Letter of wishes

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Wealth Management

Protection, Enhancement and Control of wealth

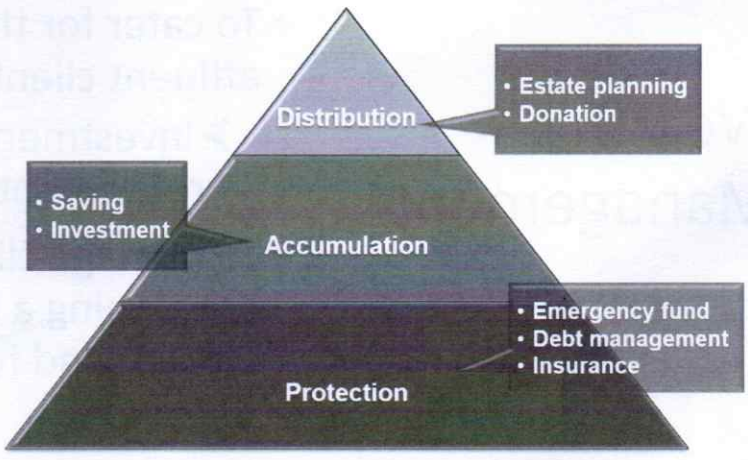
- Protection – insurance, tax, investment, preserve
- Enhancement – investment, savings
- Control – distribution, estate and succession planning

To maximise wealth over future generations

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The Pyramid of Wealth Management

Source: IFEC



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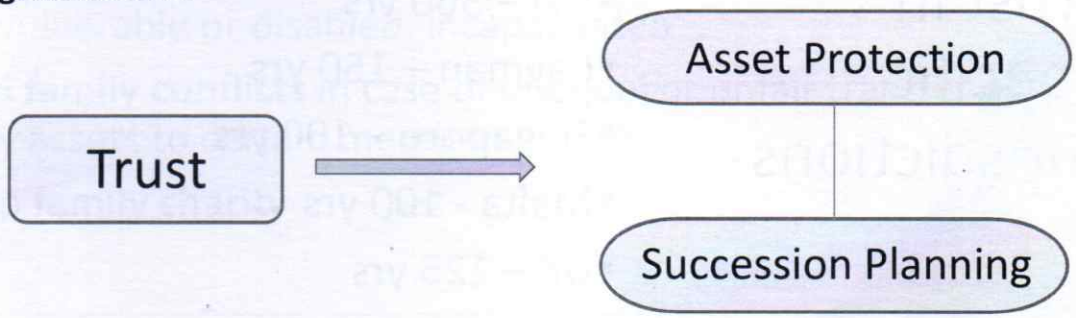
Private Trust or Family Trust

- 3 Parties
  - A trust is an arrangement (relationship) to transfer property or assets by one person (**Settlor/信託人/授託人/財產委託人**) to be held by a person (**Trustee 受託人**) for the benefits of others (**Beneficiaries受益人**) and/or for purposes (charitable or non-charitable if permitted).
  - The **distinction** of **legal** and **beneficial** title has **lots of convenience**.
- 3 Certainties
  - A valid trust has words (intention), subject matter, and objects
- A family member, or HNWI, settles a trust in favour of certain other family members as beneficiaries. Often, these beneficiaries are his or her dependents, such as a spouse, children or grandchildren, but these beneficiaries may include non-family members. The benefits of the trust are to cover many generations.

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Use of Trust for Wealth Management

- Family Trusts have become an increasingly popular choice for **asset protection**, **family succession** and **preservation of their family wealth** over **future generations**



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Family Succession

- Wider than estate planning – disposal of a person's estate/legacy. Succession – future management of family assets over generations
- Trust can exist for a very long period of time beyond the lifetime of the settlor
- Single structure to hold/consolidate disparate family assets for family members

SNT by HK Gov.
Special Needs Trust for SEN people

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Duration of Trust in Specific Jurisdictions

- Indefinite – HK (after 2013 Trust Law (Amendment) Ordinance), Bermuda, Jersey, Guernsey, Bahamas, Cook Islands
- BVI – 360 yrs
- Cayman – 150 yrs
- Singapore – 100 yrs
- Malta - 100 yrs
- UK – 125 yrs

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Family Succession

- [Discretionary trusts] provide an **orderly** and **controlled distribution** of family wealth to successive generations of the family - how and when they will become entitled to the legacy at a specified time or over a period designed by the settlor
- **Provision** of a **source of income**, but not capital, for a spouse for life; making provision for **education** but not letting them have access to capital until later in life; or setting aside funds for **business ventures** for next generation

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Family Succession

- **Provision** for those who are **unable to manage** their own affairs, such as minor, infant children, spendthrift children, the aged, the sick, vulnerable or disabled, incapacitated
- **Avoid family conflicts** in case of unequal or unfair transfer of family assets to certain members
- Set up **family charity**

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Avoidance of Probate

- Death of settlor does not necessitate probate (遺囑認證/遺產承辦) for trust assets
- Testamentary (Will) trust assets do not avoid probate
- Those assets are **no longer** the settlor's assets, will pass to the beneficiaries of the trust in accordance with the trust deed
- Trust can be a useful "umbrella" for holding assets and preventing the need for the time and cost in obtaining Probate or Letters of Administration
- particularly for multi-jurisdiction assets

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Business Succession

- Smooth continuation of the Business
- The family business can be put in the trust to retain family ownership and control of a business which may then provide financial security and career opportunities to family members
- Consolidating asset holding and management - the businesses now owned under the trust, do not belong to any particular branch of the family, they may be managed through future generations
- It is important where family members have little business experience of their own or where they are unlikely to agree on running the business

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Asset Protection

- Potential tax benefits
- Settlor no longer owner of the assets
- Assets do not yet legally belong to the beneficiaries (discretionary trust)
- Against creditors, bad marriage claims
- To establish a fund of assets which can provide for the family including future generations even if the family business (the settlor) were to go bankrupt

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Anti-Forced Heirship

- Many trust jurisdictions do not recognize challenges to trusts under local heirship laws (HK with movable property). France, Italy, Spain and Japan, Muslin have mandatory succession rules.
- A transfer of movable property to a trust expressly governed by Hong Kong law will not be invalidated by foreign forced heirship rules
- Need to look at the type of and location of the trust assets.
- The law governing the trust protects the assets of the trust.

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Investment

- Manage and invest family assets through professionals. Trust and Holding Company structures frequently used to hold investments. Who control and manage the investments?
- Unit trusts are a common form of fund structure used to pool investor funds and investments.

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Employee Benefits and Retirement Benefits

- ESOPs (Employee Stock Ownership/Option Plan). Often, depending upon length of service, an employee may become entitled to shares or stock in the employer's company
- The trust will detail when the employee receives such shares or stock and when he may sell them (discretionary trust)

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Employee Benefits and Retirement Benefits

- Where an employer has properly transferred assets to the Trustees of the EBT eg company shares, those assets should be protected from creditors of the employer
- Vested assets held for an employee are considered the employee's estate and therefore available to the employee's creditors
- Safer for the employees.
    i. Protect assets from company creditors
    ii. Create internal market for shares

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Tax Planning

- A family trust can be structured so that assets placed into the trust belong neither to the settlor nor the beneficiaries. This means that potentially neither the settlor nor the beneficiaries may be liable for taxes on those assets or taxes on income arising from those assets
- For Hong Kong Trusts, tax advantages include no taxes on profits arising in or derived from a place outside Hong Kong, no capital gains taxes, no taxes on dividends and no inheritance taxes
- Anti-avoidance legislation in the home country of the settlor or in the location of the trust assets may seek to counteract this outcome, but a correctly structured and administered trust may offer substantial tax efficiencies

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Flexibility, Privacy and Confidentiality

- No prescribed structure. No rigid formal requirements for the creation and operation of trusts
- Beneficiaries of a family trust are often not told about the terms of the trust deed
- Public may not see the identity of beneficiaries
- Trust assets are held in the name of the trustee. No requirement for public disclosure (but not for government)

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Asset Protection and Discretionary Irrevocable Trust

- The discretionary trust used to **better** achieve this asset protection and preservation objective
- To guard against marriage breakdown and family disputes
- Both **settlor** and **beneficiaries** are shielded from creditors
- Revocable trust deemed the settlor still own or could still own the assets
- Creation and deployment of the trust – an over-simplistic approach may offer no protection and no shield at all

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Asset Protection and Discretionary Irrevocable Trust

- Take into account different jurisdictions will have different effects
- Formation and administration of a trust for the purpose of asset protection requires the help of trust professionals well versed in not only trust law but matrimonial laws, estate laws and general commercial laws
- Transfer of assets into a trust can be attacked and existence of the trust may be challenged, if the settlor control too much

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Asset Protection and Discretionary Irrevocable Trust

- Family control vs. asset protection
- No single off-the-shelf "standard" discretionary trust

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Uses of Trust

- Cases
  1. Taxi driver Owner (Protective Trust, Discretionary Trust)
  2. Joyce Cheng (Fixed Interest Trust)
- [Fixed Interest Trust] Since the Beneficiary has a quantifiable interest in the Trust Fund, there is no asset protection for the Beneficiary's interest from the creditors of the Beneficiary

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Process of Setting Up a Trust

- Appoint Consultant (wealth planner, legal advisor) → understand needs and requirements
- Preliminary Memorandum of Advice – settlor, beneficiaries, assets, objectives
- Proposal and recommendations →Trust Plan
- Drafting Letter of Wishes 意願書 (Settlor), Trust Deed 信托契约 (Trustee) and asset transfer plan
- Establishing the Trust – set up accounts, asset settlement
- Annual review

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Setting up a Family Trust

It is important to know:

- Intention, wishes and objectives of the settlor for creating the trust
- Nature, situs and estimated value of the assets to be transferred to the trust
- The present and intended tax status of the settlor and the intended beneficiary
- Type of trust, governing law (choice of jurisdiction)

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Selecting the Best Jurisdiction

Quality and suitability of the legislation in different jurisdictions worldwide can vary.

It should offer:

- strong tradition of enforcing trusts
- English common law system
- established reputation for trust business
- Modern legislation, including contemporary trust concepts
- Low or no taxation for trusts

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Identify a Trustee and Due Diligence

- Trustee services
  - Financial strength
  - Experience, history of establishment in industry
  - How many trust clients
  - Total trust assets under management
  - Offices and admin centers in the world

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Drafting the Trust Deed

- Formalities of setting up a family trust – trust features under Hong Kong law
  - No minimum value of trust property
  - No Hong Kong residency requirements
  - No Hong Kong registration requirements
- The main cost is the fee for preparation of the trustee deed, other documents for asset transfer, and annual management fee for the trustee services